

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date **April 12, 2006** Time **9:30 to 4:30 PM** Place **Room 5112, State Office Bldg**

Members

(Attendees = x)

Commission Members

xChairperson, Joyce W. Clark, *Washington* xDarwin L. Johnson, *Wasatch*
xDavid M. Lattin, *Salt Lake* xGlen W. Roberts, *Utah* xR. Curt Webb, *Cache*

Department Staff

xJohn E. "Mickey" Braun, Jr. xPerri Babalis xJilene Whitby xDarrel Powell
Ass't Commissioner *AG Legal Counsel* *PIO/Recorder* *Dir. Market Conduct*
xGerri Jones xSheila Curtis Brad Tibbitts xGale Lemmon
MC Examiner *MC Examiner* *Dir. Life & P&C* *AG Prosecutor*

Public

Doug LeDoux, Bruce Mack, Jeff Jensen, Paul Newton

Minutes

I. Welcome and Introductions / Chair, Joyce Clark

Joyce started the meeting at 9:32 a.m. Mickey introduced the new Market Conduct Division director, Darrel Powell. Gerri, because her position is funded by the title industry, will work on title all the time. Sheila is assigned to title issues, however, she could be assigned other investigation depending on the Department's need and workload.

II. Adoption of Minutes of Previous Meeting

Darwin made a **motion** to approve the minutes without change and David seconded it. The vote was unanimous in favor of the motion.

III. Review & Concur with Licensee Report

The Commission reviewed the report and Curt made a **motion** to concur. Darwin seconded the motion and the vote was unanimous in its favor.

IV. Review & Concur with Enforcement Case Report

Mickey introduced the case report and turned the time over to Gale to answer questions and give further detail.

- Millcreek Land Title Insurance, Inc. - Enforcement resulted from filing violation. They conducted over 1800 closings using un-filed escrow rates. Administrative forfeiture of \$5,000 and probation for 24 months. The forfeiture has been paid.
- Gale referred to a pending case against a title agency. Employees of the agency, previous to being hired, were convicted of bank larceny. Knowingly hiring felons is a violation of federal law 18USC Section 1033. Curt thought this law referred only to licensed employees. Gale said it dealt with any employee. He suggests the agency's license be suspended for 90 days. Curt questioned why the department was reviewing the details of this case with the Commission prior to its being concluded. Gale said it was his impression that the Commission wanted to see the cases the department was working on. Perri thought the less the Commission knew about a case the better it would be if they decided to hear it or chose to disagree with the hearing officer.
- In regards to the Millcreek action, Curt asked if malice was involved? Sheila, who worked on this case, said that Millcreek was not aware that they had not filed the required rates and

complied once they knew. Joyce asked if any rules needed to be made clearer? Mickey noted that the department is not required by law to verify the accuracy of a filing before it is used. The law just requires that the rates be filed.

- Mickey noted that the department was now responding by letter when complaints were received.
- Curt made the **motion** to accept the proposed action against Millcreek and Darwin seconded it. The vote was unanimous in favor of the motion.

V. **Action Items from Previous Meeting**

- **Put Open Title Investigation Number Summary on Web** / Mickey
This report, which was given to the Commission at the March meeting, has been put on the web. It will be updated about every three months.
- **Verify the process of making "findings"** / Mickey
Pending till May
- **Class outline to Commission members** / Glen
Glen provided a copy of the class outline. "Duty to disclose" needs to be defined, typos need correcting and we need to go into more depth on case law. Darrel said that once the class is concluded a question and answer period can be held and the views of the Commission can be provided. When the outline is finalized, **Glen will send it to the Commission** for review. Input can be given at the next meeting.
- **Notify ULTA about class to be offered by Commission** / Glen
Glen will work with Michael to approve the course outline. Joyce, Curt, and Gerri will be listed as teachers on the course outline.
- **Invite Canyon Anderson, Jeff Jensen and Bruce Mack to meeting** / Joyce
 - Bruce Mack, a practicing lawyer, but not in the title business, gave his feelings on fiduciary responsibilities and split closings.
 - The courts have defined escrow functions. Split closings are the result of market driven issues. The two fiduciaries involved in a split closing do not know what the other is doing. It is best to have one person do it. The reason for a split closing is that each group of people, the realtors and the title company, want their own escrow agent to handle the transaction. Each has a vested interest. It is against the law for escrow agents to represent one party. He hoped the Commission would fix this problem.
 - There is also a need to define the duties of agents involved in a split closing. He has seen only a few violations involving split closings but the losses have been substantial and most involve dishonesty. This body should address the following:
 - If split closings are allowed:
 - 1) look at underwriters and breach of underwriting agreements;
 - 2) look at the insured closing letter. Does it cover the recipient for non-underwritten title behavior. Most lenders don't know there is a split closing and duties that are being delegated.
 - 3) Does 31A-23a-407, Liability of title insurers for acts of title insurance producers, apply to both agents in a split closing?
 - 4) Is the honest agent liable for the dishonest acts of the other party's agent?
 - Make a policy decision based upon whether split closings are good or bad for the public and then make determinations on marketing side so one party is not hurt. If split closings are accepted then the law needs to be amended regarding liability.
 - Curt Webb - Where dishonesty is involved in a violation, would a good contract have changed the results? Bruce thought it would. If contracts are clearer, issues are resolved faster.
 - Doug LeDoux, Investigator, Fraud Division - If there had been no split closing would the same thing have happened? Bruce said it depended upon the agents and if they are honest or not.

- Jeff Jensen, President of Landmark Title, agreed with most of what Bruce said.
 - It should be noted that title companies are not driving the split-closing issue. Both the lender and the realtor want representation in a closing. Do we tell our consumers that they have to use a specific title company or should they make the decision of whether to have split closing. Either way, it should be negotiated up front. Jeff was amazed at how well agents on both sides have participated in split closings. It has not been born out that split closings cause or allow for more fraud or dishonesty. Perhaps there is double protection with two sets of eyes. There is enough room on a real estate form to add a line to allow the consumer to decide if they want a split closing or not.
 - Instructions, or lack thereof, should be addressed. He had a group to address this issue in case no one addressed it. There is a need for universal instructions that all parties can agree to up front.
 - Jeff Jensen thought there could be more than one escrow agent with fiduciary responsibility. Escrow agents are not advocates for any one party. Younger agents don't seem to understand this.
 - He can live with or without split closings.
 - Should the seller or the buyer decide if it is to be a split closing?
 - He would be glad to help draft instructions.
 - Regarding insured closing letters; most underwriters don't want to get involved in the split closing issue. They don't have confidence in their agents.
- Joyce Clark asked Jeff Jensen to email his instructions to her.
- Curt Webb said it would be disruptive to change to a single closing market. We need substantive justification before disrupting the market to make such a change. So far we don't have it. There is no underwriter support. The Attorney General's office said the code was not strong enough to write a rule requiring it. We need to reduce the risk
- Curt read LandAmerica Financial Group's letter (Underwriters Commonwealth Land Title, Lawyers Title, and Transnation Title) – they will no longer issue or permit the issuance of Closing Protection Letters in support of a “split closing” unless the lender to whom it is addressed has authorized the disbursement of funds to the other closing entity to accomplish the payoff(s) of liens against the seller's title. Curt has written to the author of the letter for further clarification. The underwriters had a meeting last week and discussed the letter. Jeff said the underwriters he works with would not give Closing Protection Letters to owners, even though the letter addresses them.
- Paul Newton of Backman Title said RESPA speaks to this. Standardization is needed if we keep splits. The seller cannot dictate it under U. S. Code [TITLE 12](#) > [CHAPTER 27](#) > [§ 2608](#). Doug LeDoux asked who he thought was pushing splits? Paul thought realtors or mortgage lenders. Consumers usually don't care. Curt said the consumer hires the agent and the agent drives the deal.
- **Discuss Model Acts, what do they say about mandating minimum rates.**
Put on next months agenda.

VI. Old Business

- **Make adjustments to Model Act (in May)**
- **Can Missed Questions be Reviewed After Taking a Test?** / Mickey
Discuss at May Meeting.
- **Escrow Filing Rules R592-3 & 4 - Results of hearing and comment period** / Mickey
 - Glen **moved** to accept the matrix with changes discussed. See changes on attached matrix. Darwin seconded the motion. The vote was unanimous in its favor. **The Commission wants to see a final version of the matrix before filing it with the rule.**
 - David Moore's comments were reviewed.

- Curt verified that if a person does not put a fee in “Other Service Fees” section of the matrix and it is not listed elsewhere on the matrix, then the fee must be justified on an hourly basis.
- Glen made the **motion** to delete wording in the matrix and both rules to do with the marketing package. Darwin seconded the motion and the vote was unanimous in its favor. Both rules should be sent to rulemaking to begin their second comment period. A hearing should be scheduled for R592-4 but not R592-3. Glen made the **motion** to accept the rules as amended. Darwin seconded the motion and the vote was unanimous in its favor. (A copy of the rules with their changes is attached) The Commission asked that the rule be sent to them to review before re-filing.
- **Sharing office space with realtors - Update / Gerri**
Pending

VII. Break for Lunch

VIII. New Business

- **Liaison Meeting issues:**
 - **Legislation passed**
 - SB99, *County Records Amendments*: Modifies provisions related to termination of joint tenancy, tenancy by the entirety, life estate, or determinable or conditional interest to require an affidavit to be recorded in order to terminate the interest.
 - SB100, *County Officer Amendments*: Changes the time frame for imposing a penalty for failure to appear and testify.
 - SB107, *Title to Manufactured Housing or Mobile Homes*: Provided a way to do affidavits without surrendering the title. The new endorsement on manufactured homes may be out now.
 - SB130, *Joint Tenancy Amendment*: Clarifies the effect of the severance of a joint tenancy on remaining joint tenants.
 - SB134, *Lien Duration of a Foreign Judgment*: Provides that a foreign judgment expires eight years after the date of entry by the court in the foreign jurisdiction unless the lien is renewed in Utah as required by law.
 - SB205, *Real Property - Partial Release or Partial Reconveyance*: Bill allows a 60-day reconveyance notice.
 - Gerri noted that the Market Conduct Division could reassign Sheila to take care of workload in other areas of the division.
 - A new REPC was approved through the Real Estate Division.
 - Paul Newton talked about flips.
 - Flips are an invitation for fraud.
 - Section 31A-23a-406 says title insurance should be issued for an escrow closing.
 - If an A-B and B-C closing is done, Section 31A-23a-406 requires a separate closing for each. Subsection 3 says you cannot do flips unless you have independent cash for each. Instructions should describe the flow of money and be signed by both parties to the transaction. Transaction A-B must close simultaneously with or before B-C. If there are two escrows both must be satisfied.
 - The Commission could decide how flips should be done.
 - Glen – Our issue is how to deal with this in the market place? Perri thought this would have to be handled on a case-by-case basis. Joyce asked Perri to get an opinion regarding individual escrows as found in 31A-23a-406(3)(b). She agreed. Curt thought that unless fraud was involved the Commission should leave it alone. Instructions won’t stop fraud. Darwin did not know why a person would sell for under market value. Curt said a person might be willing to sell for less to reduce liability. Glen felt the Commission needed to do something about flips because they were conducive to fraud.

- What is the duty of the escrow? What does he have to disclose? Clarification is needed. What is the proper way to close a flip?
- Joyce was concerned that fraud is created with lenders, realtors.
- Paul said that UAR had ratified what the Commission was talking about doing.
- As representative of ULTA, Paul asked the Commission to provide direction on flips.
- Should "A" know what "C" is paying? Doug said that maybe the question should be, "What is your duty to disclose?" Disclosure will stop fraud.
- David noted that you can't flip with an FHA due to the waiting period.
- Joyce asked Perri to give them direction and Perri said she would need to know specifically what the commission wanted. Paul suggested she look at California cases, even though the laws are different.
- Doug said it would be nice to know what an escrow is.
- Some companies will not do flips because of the liability involved. When a suit results everyone is dragged into it, whether they are at fault or not.
- Glen asked Paul, as upcoming president of ULTA, what role he would like the Commission to take? Paul said he would like the Commission to tackle the hard problems and provide solutions to the industry. He would like to see Gerri and Sheila spend less time on donuts and more time on fraud. Gerri said they already were. Paul would like to see donuts taken out of the code because it hobbles their efforts. Inducements are a bigger problem than donuts.
- **11:55 a.m. adjourned for lunch until 1 pm.**
- **Resumed meeting at 1:07p.m.**
- Joyce announced she had invited Canyon Anderson of Backman Title to talk about forfeitures at the next meeting. Mark Webber of First American Title Insurance Agency would like to talk about property profiles at the next meeting at 10 a.m.
- Curt thought the Commission had decided to address fees and then work on filing procedures.
- The code says that a farm package must be charged for. Glen suggested that everything to do with a farm package be eliminated from R590-153, R592-3 and R592-4.
- Mickey reminded the Commission that they have authority to change rules dealing with title. Delete paragraph 8 from the matrix.
- Glen noted that rule R592-3 and R592-4 don't deal with what you have to charge.
- **Mortgage Bankers - New General Closing Instructions**
Put on May's Agenda
- **Change to Marketing Rule to up amount per day for inflation**
Put on May's Agenda
- **New Title Market Conduct Examiner - How affect industry and contributions?**
See earlier discussion above. Gerri Jones is the market conduct examiner paid for by the industry and dedicated solely to investigating title related matters. Sheila Curtis is one of the Department's general fund full time employees. She is currently assigned to title investigations, however, she is not exclusively assigned to title investigations as is Gerri.
- **Industry frustration with noncompliance with rules and inadequate enforcement - What can Commission do?**
Put on May's Agenda
- **Problem regarding "builders' rates"**
Put on May's Agenda
- **Dan Simmons' Issue**
The department has taken no action on this at this point.
- **Clarify double escrows / Darwin**
Add to May agenda.

IX. Other Business from Committee Members

- Sheila brought up the issue of advertising title insurance on a realtor's moving van. It was decided that this was not allowed under the law.
- Add a discussion about model rules to next month's minutes. Glen will not be at the next meeting.

X. **Reminder:** Liaison Meeting first Monday in July 10

XI. **Adjourn** Darwin made a motion to adjourn at 2:58 p.m. and David seconded it.

Next Meeting

9:30 a.m.

January 11, 2006	July 12, 2006
February 8, 2006	August 9, 2006
March 2, 2006	September 13, 2006
April 12, 2006	October 11, 2006
May 10, 2006	November 8, 2006
June 14, 2006	December 13, 2006